IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

(1) MIA OUTDOORS DISTRIBUTION SERVICES, LLC, an Oklahoma domestic limited liability company, d/b/a JIMMY's EV WORLD, (2) JIMMY LONG, an individual; and (3) TERRENCE ANTON, an individual, Plaintiffs, v. (1) MIA GLOBAL USA, INC., a foreign business corporation; (2) MIA GLOBAL, INC., a foreign business corporation; (3)MBAK ENERGY SOLUTIONS, INC.; (4)CHINA BAK BATTERY, INC.; (5)MICHELLE BOOS, an individual; (6)GABRIEL CARRELO, an individual; (7)RANDELL TORNO, an individual; and (8)NOLIN HAN, an individual, Defendants.	)	Case No. 26-cv-00091-SH

PLAINTIFFS' RESPONSE TO DEFENDANT GABRIEL CARRELO'S MOTION TO DISMISS

Donald A. Lepp, OBA No. 16260
BARROW & GRIMM, P.C.
110 West Seventh Street, Suite 900
Tulsa, Oklahoma 74103
(918) 584-1600
lepp@barrowgrimm.com

ATTORNEY FOR PLAINTIFFS

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Plaintiffs, MIA Outdoors Distribution Services, LLC d/b/a Jimmy's EV World ("MIA Outdoors"), Jimmy Long ("Long") and Terrence Anton ("Anton"), (collectively "Plaintiffs"), and for their *Response to Defendant Gabriel Carrelo's Motion to Dismiss* [Dkt. 21], state as follows:

INTRODUCTION

Defendant Gabriel Carrelo ("Carrelo") is the financial architect (or in layman's terms, the Bagman) for the criminal enterprise led by his mother, Defendant Michelle Boos ("Boos"). Below is a photo from May 2, 2025, showing Carrelo flanked by Boos on his right and Long and his wife on Carrelo's left where they were meeting to discuss a fleet of golf carts that would never materialize.

Carrelo seeks to dismiss this action for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). As to the jurisdictional issue, Carrelo, despite his claims otherwise, has sufficient contacts with Oklahoma. 12 O.S. § 2004. For instance, Carrelo deliberately directed activities in the form of calls and emails to Plaintiffs in Oklahoma concerning the criminal enterprise and in furtherance of the scheme to defraud the Plaintiffs. Moreover, because Plaintiffs have alleged a civil RICO claim, Carrelo is subject to the jurisdiction of this Court under the nationwide service provisions of the RICO statutes.

Regarding Carrelo's arguments as to his Fed. R. Civ. P. 12(b)(6) motion, Plaintiffs have alleged viable claims against Carrelo concerning his role in the fraudulent scheme in which Carrelo participated in a meaningful way. Though rarely the face of the operation, Carrelo was instrumental in managing the financial and corporate affairs. Plaintiffs have made sufficient allegations to support their claims.

Plaintiffs request that this Court deny the Motion to Dismiss and order Carrelo to answer the lawsuit within twenty (20) days.

ARGUMENTS AND AUTHORITIES

I. THIS COURT HAS PERSONAL JURISDICTION OVER CARRELO.

A. Specific Personal Jurisdiction.

Oklahoma's long-arm statute extends the jurisdiction of Oklahoma courts to the outer limits permitted by the Oklahoma Constitution and the Due Process Clause of the United States Constitution. 12 O.S. § 2004; *Galier v. Murco Wall Products, Inc.*, 528 P.3d 293 (2022). General and specific jurisdiction are two distinct types of personal jurisdiction. General jurisdiction allows a court to exercise jurisdiction over an out-of-state party for any purpose. *Dental Dynamics, LLC*

v. Jolly Dental Group, LLC, 946 F.3d 1223, 1228 n.2 (2020) (citing *Old Republic Ins. Co. v. Cont'l Motors, Inc.*, 977 F.3d 895, 903). In contrast, specific jurisdiction permits a court to exercise jurisdiction only if the cause of action relates to the party's contacts with the forum state. *Old Republic*, 877 at 904; *see also Daimler AG v. Bauman*, 571 U.S. 117 (2014).

The exercise of specific personal jurisdiction requires satisfaction of a two-part test. First, the defendant must have "purposefully directed" its activities at residents of the forum state or "purposefully availed" itself of the privilege of conducting activities in Oklahoma. *Dental Dynamics,* 946 F.3d at 1229. Second, the plaintiff's injuries must "arise out of or relate to" the defendant's forum-related activities. *Id.*

Here, Carrelo claims in the Declaration attached to his Motion that he has "had no dealings with any of the Plaintiffs concerning any relationship between Plaintiffs and Defendant MIA Global, Inc. or the Master Agreement attached as Exhibit 1 to the Petition." This statement is demonstrably false.

Carrelo's involvement with Defendant MIA Global is deep and longstanding. As of May 2023, Carrelo served as the primary contact for MIA Global Inc.'s Chase bank account. Copy of Chase statement, attached hereto as **Exhibit 1.** The address associated therewith is Carrelo's residential address.[1] In a What's App conversation between Boos and Long on February 26, 2025, Boos comments "I am glad Josh and [Carrelo] are in contact and working together." *See* What's App exchange attached hereto as **Exhibit 2**. Josh is Long's son who was working for Plaintiff MIA Outdoor. *See* Joshua Long's Declaration attached hereto as **Exhibit 3**.

[1] Carrelo used his Branco Insurance email address which could implicate this insurance company if they are involved as well. Plaintiffs are investigating this link and expect to explore it in discovery.

In February 2025, Carrelo was updating franchise taxes on behalf of Defendant, MIA Global, the entity through which the fraud was conducted. *See* Email attached hereto as **Exhibit 4**. Thereafter, Carrelo worked with a Delaware service agent to restore Global Inc. to good standing, allowing it to conduct business in Oklahoma. All while including Jimmy, in Oklahoma, on the email chain. *See* Emails attached hereto as **Exhibit 5**.

On April 16, 2025, Carrelo brought Defendant MIA Global Inc. to good standing in the state of Oklahoma merely to defraud Long and MIA Outdoor. Together, MIA Global Inc. and MIA Global USA were the primary vehicles through which the criminal enterprise executed its scheme to defraud Plaintiffs.

> **From:** Gabriel Carrelo <gabriel@brancoinsurancegroup.com>
> **Date:** April 16, 2025 at 4:38:33 PM CDT
> **To:** Michelle BOOS - MIA GLOBAL <michelleboos@mia-global.com>, Mia Golf Cars <miaoutdoors.distribution@gmail.com>
> **Subject: FW: Certificate of Good Standing Order**
>
> Please see below!
>
> **From:** filings@delawareinc.com <filings@delawareinc.com>
> **Sent:** Wednesday, April 16, 2025 5:37 PM
> **To:** Gabriel Carrelo <gabriel@brancoinsurancegroup.com>
> **Subject:** Certificate of Good Standing Order

Receipt
Date: 04/16/2025
Order #: GS207832
Account ID: 288107

MIA GLOBAL INC. **Certificate of Good Standing (Standard)** File Number: 6929183	$124.00

Order Total	**$124.00**

The key inquiry is whether, by calls and emails, Carrello has availed himself of privilege of conducting business in forum and protections of local law. *See Kenan v. McBirney*, 702 F.Supp. 843, 845 (1989). Here, there can be no such question. As demonstrated above, Carrelo's extensive involvement with in-person meetings concerning the scheme in Oklahoma, as well as calls and emails to Oklahoma regarding the MIA Global entities establish purposeful availment of the laws of Oklahoma.

B. Nationwide Service Through RICO

Even if the Court does not find sufficient minimum contacts for specific personal jurisdiction, RICO contains two distinct service provisions that may authorize personal jurisdiction over out-of-state defendants. More specifically, 18 U.S.C.A. § 1965(b) states:

> [I]n any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States…

by the marshal thereof. The Tenth Circuit has clarified that this section "gives RICO its nationwide jurisdictional reach" permitting nationwide service where the ends of justice require it. *Cory v. Aztec Steel Bldg., Inc.*, 468 F.3d 1226, 1229 (2006).

To invoke RICO's nationwide service provision, courts engage in a three-step analysis: "(1) whether personal jurisdiction can be established over one defendant; (2) whether the ends of justice require nationwide service; and (3) whether the exercise of jurisdiction comports with Due Process." *Greenway Nutrients, Inc. v. Blackburn*, 33 F.Supp.3d 1224, 1248 (2014). Here, the Court indisputably has personal jurisdiction over Defendants MIA Global USA, MIA Global, Inc., and Boos. MIA Global, Inc. is a signatory to the Master Agreement or MIA Global USA is its successor. The Master Agreement between MIA Global, Inc. and MIA Outdoors contains a venue provision for Tulsa County. *See* Master Agreement, attached hereto as **Exhibit 6**. Boos has physically entered the state of Oklahoma to engage in the conspiracy. As such, the first prong is met.

Additionally, the second and third prongs are met. Carrelo was engaged in a conspiracy to defraud Plaintiffs, as well as others. As demonstrated herein, he engaged in numerous contacts with the state of Oklahoma with the deliberate purpose of defrauding, deceiving, and cheating Oklahoma residents. The ends of justice and due process are clearly met by this Court exercising jurisdiction over Carrelo.

C. Alternative Request for Discovery.

For jurisdictional challenges under Fed. R. Civ. P. 12(b)(1), courts have broad discretion to permit discovery when pertinent facts bearing on jurisdiction are controverted or disputed. *Orchid Biosciences, Inc. v. St. Louis University*, 198 F.R.D. 670 (2001). The Tenth Circuit has held that "when a defendant moves to dismiss for lack of jurisdiction, either party should be

allowed discovery on the factual issues raised by that motion." *Grynberg v. Ivanhoe Energy, Inc.*, 490 Fed.Appx. 86, 102 (2012) (citing *Budde v. Ling-Temco-Vought, Inc.*, 511 F.2d 1033, 1035 (10th Cir. 1975). In the event the Court does not believe purpose availment has been shown, Plaintiffs ask for leave to depose Carrelo on issues relating to his contacts with Oklahoma, and targeted document requests as to same.

II. PLAINTIFFS' CLAIMS AGAINST CARRELO ARE VIABLE.

A. Negligent Misrepresentation.

Plaintiffs have pleaded a viable cause of action for negligent misrepresentation. Carrelo's sole argument is that he owed no duty to Plaintiffs. However, that is false. Carrelo was heavily involved in the conduct of the business of the MIA Global entities. To reiterate, he was essentially the financial architect behind the scheme, though he worked primarily in the background. In reviewing the Master Agreement (Exh. 6), it is clear that this connection between Plaintiffs and the MIA Global entities was designed to be a close relationship, or even functioning in a manner akin to that of a joint venture. Thus, Carrelo controlled the moneys of Plaintiffs that were advanced. As such, this relationship created the duty of Carrelo to use the money for its intended purposes and to advise Plaintiffs when it would be otherwise.

In Oklahoma, omissions can serve as the basis for a negligent misrepresentation claim. *See Lopez v. Rollins*, 303 P.3d 911 (2013) (the Court of Civil Appeals of Oklahoma held that negligent misrepresentation could be inferred where Sellers failed to disclose material information to Buyers regarding the property at issue). Moreover, constructive fraud is "any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or anyone claiming under him, by misleading another to his prejudice." 15 O.S. § 59. Here, Carrelo participated in a fraudulent scheme in which he had a duty to disclose information regarding his handling of the

funds advanced by Plaintiffs. Even if Plaintiffs cannot prove a fraudulent intent on Carrelo's part, Plaintiffs can prove negligent misrepresentations upon which they relied to their detriment.

B. Fraud

The Tenth Circuit has emphasized that Fed. R. Civ. P. 9(b) is not intended to be an insurmountable hurdle for claimants to overcome, and while a complaint must give defendants adequate notice of the charges, it need not marshal all the evidence against them. *In re Commercial Financial Services, Inc.*, 322 B.R. 440, 448 (2003). "[C]ourts may consider whether any pleading deficiencies resulted from the plaintiff's inability to obtain information in the defendant's exclusive control." *United States ex rel. Polukoff v. St. Mark's Hospital*, 895 F.3d 730, 745 (2018) (quoting *George v. Urban Settlement Servs.*, 833 F.3d 1242, 1255 (10th Cir. 2016). "[A] complaint stating the 'who, what, where, when, and how' of the alleged fraud gives a defendant the requisite level of notice required under Rule 9(b)." *Clinton v. Security Benefit Life Ins. Co.*, 63 F.4th 1264, 1277 (2023).

Plaintiffs have alleged Carrelo (who), directly, indirectly, or by omission (what), in person or over the phone (where), from 20§to 2025 (when), failed to disclose material facts as a part of a scheme to swindle Plaintiffs (how). Plaintiffs have sufficiently pleaded a fraud claim.

C. Civil Conpiracy

Courts have found conspiracy allegations sufficient when they describe that defendants "conspired and agreed" to devise a fraudulent scheme, compiled false information, and submitted fraudulent claims, even without detailing every individual action by each conspirator. *State of Okl. ex rel. Dept. of Hum. Servs. v. Children's Shelter, Inc.*, 604 F.Supp. 867 (1985). The critical elements are establishing that a conspiracy existed, that both defendants were members of the conspiracy, and that the underlying conduct (here, fraud through both affirmative

misrepresentation and omission where there was a duty to disclose) was unlawful. *Hackney v. State*, 874 P.2d 810, 812, n.4 (1994). Since Oklahoma law recognizes that omissions can constitute fraud when there is a duty to disclose, as seen in *Croslin v. Enerlex, Inc*., 308 P.3d 1041, 1046 (2013), Carrelo's failure to disclose a fraudulent scheme when bound to do so supplies the unlawful act necessary to support conspiracy liability, irrespective of whether any affirmative false statements were made.

As established by the Defendants conduct, liability for conspiracy has arisen because when a conspiracy exists and one co-conspirator commits fraud through affirmative misrepresentations, all co-conspirators become equally liable for the consummated fraud. *See Littlejohn v. State*, 181 P.3d 736, 741 (2008). As will be shown in detail in Subsection D, *infra*, Plaintiffs have made sufficient allegations to establish the conspiracy to commit fraud.

D. Civil RICO

To establish a civil RICO claim under 18 U.S.C. § 1962, a plaintiff must allege four elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Tal v. Hogan*, 453 F.3d 1244, 1261 (2006). Additionally, to have standing to bring a civil RICO claim under 18 U.S.C. § 1964(c), the plaintiff must show an underlying RICO violation, injury to business or property, and that the injury was proximately caused by the RICO violation. *Clark v. Stipe Law Firm, L.L.P.*, 320 F.Supp.2d 1207, 1213 (2004). Plaintiffs have met each of these requirements.

RICO requires showing that a defendant participated in the operation or management of the enterprise. *Reves v. Ernst & Young*, 507 U.S. 170 (1993). However, they "need not have primary responsibility for the enterprise's affairs, a formal position in the enterprise, or significant

control over or within an enterprise." *George v. Urban Settlement Servs.*, 833 F.3d 1242, 1251 (10th Cir. 2016) (quoting *Reves,* 507 U.S. at 179, 184).

Yet, in this case, Carrelo *was* responsible for the enterprise' affairs and held significant control over it. For example, Carrelo's financial control of the enterprise's bank accounts place him squarely within the "operation or management" of the enterprise. Such involvement has a direct correlation to the Plaintiffs alleged purpose of the scheme: Defrauding investors through the golf cart scheme and ALYI pump-and-dump (Dkt. 18, ¶ 16); the relationship between the parties: Boos (head), Carrelo (her son and financial administrator), Han, Torno – all with defined roles (*Id.* at ¶ 78); The longevity of the scheme and enterprise: The enterprise lifespan beginning at least in 2024 through the date of filing in 2026, with Boos' predicate criminal history going back to the early 2000s providing patterned context (*Id.* at ¶¶ 17-28). The enterprise, composed of the association of individuals and shell companies, is distinct from the RICO defendants themselves – as required by the Tenth Circuit. Here, because the corporate shells (MIA Global, MIA USA, MBAK) serve as the enterprise vehicle while the individual defendants are the persons conducting it, the distinction is clearly established.

The Amended Complaint specifically identifies the enterprise structure – Boos at the head, Carrelo as the administrative hub, and others playing distinct roles to assist in inducing Plantiffs. *Id.* at ¶ 78. Carrelo had unilateral executing authority over MIA Global and MIA USA bank accounts. *Id.* at ¶ 31. This authority was further expressed by his personal involvement in the diversion of funds from commercial purposes to personal use (*Id.* at ¶ 31), real estate investment through Triple C Realty using enterprise proceeds (Dkt. 18, ¶ 33), and his general use of entity bank accounts (*Id.* at ¶ 34).

A "pattern of racketeering activity" requires at least two predicate acts of racketeering activity. 18 U.S.C.A. § 1961(5); *see also Gillmor v. Thomas*, 490 F.3d 791, 796 (2007). Thus, "[t]he relationship test for satisfying the pattern requirement is not cumbersome…A showing that predicate acts have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events, is essentially all that is needed." *Bixler v. Foster*, 596 F.3d 751, 761 (2010) (quoting *Boone v. Carlsbad Bancorporation, Inc.*, 972 F.2d 1545, 1555 (10th Cir. 1992)).

Plaintiffs have pleaded the following predicate acts that constitutes racketeering activity.

a. Predicate Act 1: Wire Fraud

Wire fraud requires: (1) a scheme to defraud, (2) use of wire communications in furtherance, (3) intent to defraud. *See* 18 U.S.C. § 1343. The Amended Complaint alleges Long's $100,000 wire to MIA Global's JP Morgan account managed by Carrelo (Dkt. 18, ¶ 32), Anton's $8,000 wire to MIA Global's JP Morgan account (*Id.* at ¶ 41), and MIA Outdoors' $115,000 payment (*Id.* at ¶ 50) — received into accounts under Carrelo's control.

b. Predicate Act 2: Money Laundering

18 U.S.C. § 1956 prohibits conducting a financial transaction with proceeds of specified unlawful activity knowing the transaction is designed to conceal the origin of the funds. Here, Carrelo's purchase of Connecticut real estate through Triple C Realty is evidence of money laundering. *Id*. at ¶ 33.

c. Predicate Act 3: Bank Fraud / KYC Violation

18 U.S.C. § 1344 bars those from knowingly executing or attempting to execute a scheme to (1) defraud a financial institution or (2) obtain any of the moneys by means of false or fraudulent pretenses, representations, or promises. In this matter, the continued use of expired entity bank

accounts (*See Id.* at ¶ 34) after MIA Global's corporate dissolution constitutes an allegation of bank fraud.

d. Predicate Act 4: Securities Fraud

Finally, under 18 U.S.C. § 1348, an individual can be held criminally liable if they defraud any person in connection with any commodity or option for future delivery, or any security. The Amended Complaint alleges Carrelo was part of the ALYI pump-and-dump scheme (*See Id*. at 18, ¶¶ 52-56). Therefore, the offer of ALYI shares as inducement while Carrelo controlled the financial accounts through which the scheme operated ties him to this predicate.

All the foregoing acts establish a pattern of racketeering activity with the purpose of defrauding others. With regard to open and closed continuity, the Amended Complaint alleges the scheme ran from at least early 2024 (Anton's first CES contact) through at least April 2025 (the $115,000 payment and empty container return) – over a year of continuous predicate acts. Carrelo's formation of MBAK Energy Ops LLC after service demonstrates the enterprise is ongoing and projecting into the future. Boos' 25-year history of the same scheme predicates, it establishes the nature of the enterprise as inherently open-ended and ongoing. Dkt. 18, ¶ 18. The shell company pattern (MIA Global → MIA Global USA → MBAK Energy Ops) shows a designed mechanism for perpetual continuation.

Thus, Plaintiffs have pleaded a viable claim for civil RICO.

E. Civil Misappropriation/Conversion

Under Oklahoma law, to prove civil conversion or misappropriation when someone takes your money for one purpose and uses it for another, a plaintiff must show that money or property was entrusted to the person for a specific purpose, and they applied it to a different purpose. *State ex rel. Oklahoma Bar Ass'n v. Johnston*, 863 P.2d 1136 (1993). The key distinction is that simple

conversion does not require proof of intent – it occurs whenever someone applies money to a purpose other than that for which it was entrusted. *State ex rel. Oklahoma Bar Association v. Koss*, 452 P.3d 427 (2019). If the taking involved deceit and fraud with the purpose of depriving plaintiff of the money, this rises to the more serious level of misappropriation. *State ex rel. Oklahoma Bar Association v. Miller*, 461 P.3d 187 (2020).

Plaintiffs have alleged sufficient facts for this claim by alleging Long transferred $100,000 to a MIA Global entity where Carrelo converted to his own personal use.

F. State and Federal Securities Fraud

Carrelo argues that Plaintiffs have not alleged that he made any fraudulent statements regarding securities. This is false. The Tenth Circuit has held that "there is no requirement that the alleged violator directly communicate misrepresentations to plaintiffs for primary liability to attach under § 10(b)." SFF–TIR, LLC v. Stephenson, 250 F.Supp.3d 856, 986 (2017) (quoting *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1226 (10th Cir. 1996). Here, ALYI shares were offered to Long and Anton as a "carrot" to induce them to wire money for golf carts. Dkt. 18, ¶ 54. Carrelo was named as one of four individuals who used ALYI shares as the fraudulent carrot and one of four individuals who offered ALYI shares to Plaintiffs. *Id*. at ¶¶ 54, 44. Moreover, Plaintiffs alleged that Carrelo made statements to Plaintiffs about the validity of ALYI while knowing it was a pump-and-dump. *Id.* at ¶ 70. Plaintiffs further state that he received proceeds of the scheme and invested them in real estate. *Id.* at ¶ 33. Additionally, that Carrelo had unilateral executing authority over MIA Global and MIA USA bank accounts *Id.* at ¶¶ 31, 9. Finally, Carrelo was Boos' son and co-conspirator who "handles the financial side of the criminal enterprise." (¶ 30). These allegations are sufficient to meet the particularity standard under Rule 9(b).

Under Oklahoma law, the Oklahoma Uniform Securities Act of 2004 provides for liability of persons who materially aid a seller of securities who violates the Act, if the aider knew or had reason to know of the violation. 71 O.S. § 1-509(G). Accordingly, Oklahoma's standard is even less stringent. Therefore, Plaintiffs have pleaded viable claims for securities fraud against Carrelo.

G. Fraudulent Transfer

The Uniform Fraudulent Transfer Act, 24 O.S. § 112 et seq., broadly defines "transfer" as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance." 24 O.S. § 113(12). Carrelo contends that Plaintiffs have not adequately pleaded a debtor-creditor relationship. However, Plaintiffs have alleged that Long transferred $100,000 to a MIA Global entity where Carrelo converted those funds for his own personal use, thereby creating an obligation to repay Long. He then used those funds to purchase the Connecticut property, constituting an identifiable transfer.

H. Unjust Enrichment

An unjust enrichment in Oklahoma, requires facts showing: (1) the unjust (2) retention of (3) a benefit received (4) at the expense of another. *Oklahoma Dept. of Securities ex rel. Faught v. Blair,* 231 P.3d 645 (2010). The pleading must demonstrate that it would be inequitable for the defendant to retain the benefit without making restitution, meaning the defendant has money or property that in equity and good conscience they should not be allowed to keep. *Harvell v. Goodyear Tire and Rubber Co.*, 164 P.3d 1028 (2006); *French Energy, Inc. v. Alexander*, 818 P.2d 1234 (1991). Before a party is entitled to recover for unjust enrichment, there must be enrichment to another coupled with a resulting injustice. *City of Tulsa v. Bank of Oklahoma, N.A.*, 280 P.3d 314, 321 (2011).

Here, Plaintiffs were under the belief that funds provided to Carrelo were intended for business purposes. Yet, such funds were ultimately used for Carrelo's personal benefit alone. Therefore, under the facts pleaded in the Amended Complaint, any monies received by the Carrelo that flowed from Plaintiffs would be enrichment from a resulting injustice.

I. Breach of Fiduciary Duty

To establish a breach of fiduciary duty claim in Oklahoma, a plaintiff must plead: (1) the existence of a fiduciary relationship between the plaintiff and defendant that created a fiduciary duty owed to the plaintiff; (2) a breach of that fiduciary duty; and (3) the breach was the direct cause of damages to the plaintiff. *Graves v. Johnson*, 359 P.3d 1151, 1155 (2015). The threshold requirement is establishing that a fiduciary relationship actually existed, which is a question of fact. *See Quinlan v. Koch Oil Co., a Div. of Koch Indus., Inc.*, 25 F.3d 936, 942 (1994). "[T]he existence, or non-existence, of a fiduciary duty depends on the factual circumstances surrounding the parties' relationship and transactions." *F.D.I.C. v. Grant*, 8 F.Supp.2d 1275, 1296 (1998).

Here, Carrelo, as established many times throughout, has been granted "unilateral executing authority" over MIA Global and MIA USA bank accounts. Dkt. 18, ¶ 103. As Corporate Secretary with the aforementioned authority to control the finances, a confidential relationship, or fiduciary duty, has undoubtedly been formed. Upon diverting the funds, those of which were provided by Plaintiffs, to personal use, Carrelo breached that duty.

J. Piercing the Corporate Veil

Oklahoma courts recognize two primary theories for piercing the corporate veil. First, the alter ego or instrumentality theory applies when one corporation is simply the instrumentality of another corporation or when an individual controls the corporation such that it operates as the individual's alter ego. *See Mattingly Law Firm, P.C. v. Henson*, 466 P.3d 590 (2019). This theory

focuses primarily on control and does not require fraudulent intent. *See Pennmark Resources Co. v. Oklahoma Corp. Com'n*, 6 P.3d 1076, 1081 (2000). Second, the fraud or scheme theory applies when the separate corporate existence is "a design or scheme to perpetrate a fraud or defeat public convenience, justify wrong, or defend crime." *Kenkel v. Parker*, 362 P.3d 1145, 1149 (2015).

As established above, Carello was involved in a fraudulent scheme involving corporate entities as shield. Carrelo restored MIA Global to good standing, enabling it to maintain its corporate existence for the singular purpose of perpetrating fraud upon Plaintiffs. Therefore, Plaintiffs have pleaded a viable claim for piercing the corporate veil.

III. ALTERNATIVE REQUEST FOR LEAVE TO AMEND

In the event the Court finds any pleading deficiency, Plaintiffs respectfully request leave to amend pursuant to Fed. R. Civ. P. 15(a)(2). Leave should be freely granted because discovery has not commenced, Carrelo will suffer no prejudice, and amendment would not be futile

CONCLUSION

For all the foregoing reasons, Plaintiffs, MIA Outdoors Distribution Services, LLC d/b/a Jimmy's EV World, Jimmy Long and Terrence Anton, respectfully request that this Court deny Defendant Carrelo's Second Motion to Dismiss and for such further relief as this Court deems proper.

Respectfully Submitted,

s/*Donald A. Lepp*
Donald A. Lepp, OBA No. 16260
BARROW & GRIMM, P.C.
110 W. 7th Street, Suite 900
Tulsa, OK 74119
918-584-1600
918-585-2444 (fax)
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2026, I electronically transmitted the foregoing document to the Court Clerk using the ECF system of filing, which will transmit a Notice of Electronic Filing to the following ECF registrants:

J. Christopher Davis
Deric J. McClellan
CROWE & DUNLEVY
222 North Detroit Avenue, Suite 600
Tulsa, OK 74120
chris.davis@crowedunlevy.com
deric.mcclellan@crowedunlevy.com

Andrew E. Henry
CROWE & DUNLEVY
Braniff Building
324 N. Robinson Avenue, Suite 100
Oklahoma City, Oklahoma 73102
andrew.henry@crowedunlevy.com
ATTORNEYS FOR DEFENDANT GABRIEL CARRELO

s/*Donald A. Lepp*